(1)

91-752

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JAMES R. DADE, MONTYNE H. DADE and CIDNEY C. DADE,

Petitioners,

vs.

JOSEPH A. CANNATELLA, JR., CHARLES EDWIN CANNATELLA, DARLENE LASUZZO CANNATELLA and PAUL H. DAVIDSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented For Review

1) Can U. S. Bankruptcy Judge Stephen V. Callaway and Standing Chapter 13 Trustee Paul H. Davidson be denied judicial immunity and held accountable with other appellees for violating appellants' clearly established statutory and constitutional rights?

2) When can the Shreveport Dades expect to be discharged from jurisdiction of the U. S. Bankruptcy Court and Uniform Louisiana Local Rule No. 22.01 of the United States District Courts for the State of Louisiana?

List of Parties

JAMES R. DADE AND HIS WIFE, MONTYNE H. DADE,
AND CIDNEY C. DADE
Plaintiffs/Appellants

v.

JOSEPH A. CANNATELLA, JR., ATTORNEY AT LAW,
CHARLES EDWIN CANNATELLA AND HIS WIFE,
DARLENE LASUZZO CANNATELLA, AND
PAUL H. DAVIDSON, CHAPTER 13 TRUSTEE

Defendants/Appellees

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TABLE OF AUTHORITIES

STATUTES AND RULES

United States Code:

28 USC §157, Page A-4
28 USC §2101(e), Page Nos. 2, A-6

Title 11, Bankruptcy:

11 USCA §1301, et seq., Page 7
11 USCA §1307(c), Page 6
11 USCA §1322, Page 7
11 USCA §1325 (a)(3), Page 7
11 USCA §1325 (a)(4), Page 7
11 USCA §1328, Page 15, A-4

U. S. Constitution:

Article III, Section 1, Page Nos. 3 and A-9
Article III, Section 2, Subsection 1, Page Nos. 3 and A-10
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First Amendment, Page Nos. 2 and A-7
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Fourteenth Amendment, Section 1, Page Nos. 3 and A-9

Federal Rules of Civil Procedure

No. 19(a), Pages 2 and A-5
No. 10(a), Pages 2 and A-6

Supreme Court Rule No. 11, Pages 2 and A-6

Uniform Louisiana Local Rule

No. 22.01, Pages i, 14 and A-4

Reference to Opinions Delivered

Three opinions have been delivered: 1) A magistrate in the court of first instance (USDC, Shreveport Division) filed a Report & Recommendation in which he recommended that a Motion to Dismiss filed by Trustee Davidson be "GRANTED on the grounds that he is entitled to judicial immunity". 2) A district judge concurred and dismissed the case 21 days before the Trustee's motion was scheduled for a ruling, but the next work day following plaintiffs' motion to add Judge Callaway as a defendant. 3) Plaintiffs appealed to the Fifth Circuit. After learning that Judge Callaway had not been entered as a defendant, appellants reasserted their motion to add him as a party-appellee by filing it in the Court of Appeals. A Circuit Judge dismissed the motion on grounds that "The Order appealed from makes no reference to Judge Callaway".

Grounds for Jurisdiction of this Court

a) The judgment denying appellants' motion to add Judge Callaway as a party-appellee pursuant to FRCP Rule 19(a) and FRCP Rule 10(a) was entered on August 20, 1991.

b) No order for a hearing or extension of time to file this Petition for a Writ of Certiorari has been requested.

c) Appellants believe that this case as pending in the Fifth Circuit Court of Appeals qualifies for immediate consideration by the U. S. Supreme Court under Supreme Court Rule 11 and 28 U.S.C. §2101(e).

Constitutional Provisions Involved

a) Appellants James R. Dade and Montyne H. Dade allege deprivations of their fundamental rights under the Amendments to the Constitution of the United States as follows: to "freedom of speech" under the First Amendment, against "unreasonable search and seizure" and to "be let alone"

under the Fourth Amendment, to "due process of law" under the Fifth Amendment and to "due process of law" and "equal protection of the law" under the Fourteenth Amendment, Section 1.

b) Appellant Cidney C. Dade alleges deprivation of his fundamental right to "freedom of speech" as protected by the First Amendment, U. S. Constitution.

c) Appellants allege involvement of the following provisions of the Constitution of the United States: Article III, Section 1 that "Judges . . . shall hold their Offices during good Behaviour"; Article III, Section 2, Subsection 1 that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, (and) Laws of the United States . . . to Controversies . . . between Citizens of different States"; Article VI, Section 2 that "This Constitution, and the Laws of the United States . . . shall be the su-

preme Law of the Land; and the Judges in every State shall be bound thereby"; and Article VI, Section 3 that "all executive and judicial officers . . . shall be bound by Oath or Affirmation, to support this Constitution".

Statement of the Case

Appellants filed pro se in the USDC on January 28, 1991 a complaint entitled: "Petition for Redress of Grievances for Invading Plaintiffs' Constitutional Rights and Liberties". Defendants are the lawyer (who represented the Shreveport Dades until they dismissed him for "fraudulent and deceptive actions"), the lawyer's brother and sister-in-law, and the Chapter 13 Trustee.

No hearings or trial proceedings have been held, and no opinions issued other than those referenced on Page 1.

(A) Material Facts of the case are the Shreveport Dades hired the lawyer on Sep-

tember 25, 1987 to reorganize their debts and consolidate the two mortgages on their home because they could no longer afford two mortgage payments totalling $1,365 each month even though both were gainfully employed. The lawyer assured them they could keep their home if they would let him file a Chapter 13 bankruptcy for them and follow his advice. They followed his advice until he and his brother and sister-in-law, with the help of Judge Callaway and Trustee Davidson, had stripped them of their home, automobile, barbeque grill, brass bed, radio, cookstove and garden tractor. Even their mail was stolen out of their locked mailbox by Darlene Cannatella.

The Shreveport Dades owed $3,465 in unsecured debts when the lawyer filed their Chapter 13 bankruptcy. This debt was paid in full, 100 cents on the dollar, even though the Shreveport Dades paid the last $781 of the debt directly to creditors to

avoid being forced into having their bankruptcy dismissed or converted to a Chapter 7 to legitimatize the theft of their home and chattel on records of the Chapter 13 Office and the U. S. Bankruptcy Court.

For a Chapter 13 Trustee or U. S. Bankruptcy Judge to arbitrarily initiate a motion to force dismissal of a Chapter 13 case or a conversion to Chapter 7 violates 11 USCA §1307(c) and cheats the retail credit industry by inducing bankrupts to forego paying legitimate personal debts. It is, however, the court procedure used by Judge Callaway and Trustee Davidson to dispose of Chapter 13 bankrupts when it appears that they have been drained of assets and the Chapter 13 Office, the U.S. Bankruptcy Court or the bankruptcy lawyers need absolution for the thefts, unlawful liquidations or other crimes that occurred during the Chapter 13 bankruptcy. The Shreveport Dades evaded the trap and pro-

tected their creditors by paying them direct prior to the bankruptcy disposition hearing date.

Taking the home of the Shreveport Dades without their consent and without compensation under color of law with a fraudulent Chapter 13 bankruptcy deprived them of $45,000 in home equity which represented their life savings and violated the provisions, purpose and spirit of Chapter 13 of the Federal Bankruptcy Act [11 USC §1301 et. seq.].

The fraudulent bankruptcy plan had no rehabilitative purpose whatsoever. It was so contrary to the purposes and objectives of Chapter 13 that it could not even be considered a Chapter 7 liquidation in disguise. The home and chattel of the Shreveport Dades was not liquidated: it was stolen by the lawyer in collusion with the judge and trustee for personal use by the lawyer and his brother and sister-in-law.

Judge Callaway was the only person involved who had power to confirm the bankruptcy. He confirmed it even though it was lawfully nonconfirmable under the debtor protection provisions of 11 USCA §1322, 11 USCA §1325(a)(3) and 11 USCA §1325(a)(4). Had Judge Callaway not been willing to violate these debtor protection provisions of Chapter 13, this unnecessary and fraudulent bankruptcy would not have occurred.

Judge Callaway ignored or stonewalled every complaint made by the Shreveport Dades. Their bankruptcy was negotiated by their lawyer in proceedings in which the Shreveport Dades did not participate. For the hearing scheduled by the trustee to dispose of their bankruptcy, the Shreveport Dades filed with the U. S. Bankruptcy Court a 19-page "Motion to Recover Damages Caused by an Unnecessary Bankruptcy". At this hearing on June 5, 1990, the Shreve-

port Dades tried to discuss the facts about their bankruptcy as explained in their motion. Judge Callaway refused to hear their complaints. When they insisted on being heard, Judge Callaway made Montyne Dade stand mute holding her hand over her mouth, and told James Dade that he would be removed from the Court if he said another word about their bankruptcy or mentioned the name "Cannatella" once more in his courtroom.

The Shreveport Dades could easily have paid their total unsecured debts in the amount of $3,465 on March 4, 1988 when their Chapter 13 bankruptcy was filed, but they continued to trustingly follow their lawyer's instructions. Ten months later they were destitute.

With the approval of Judge Callaway, the lawyer and trustee confiscated the home of the Shreveport Dades for "private sale" to the lawyer's brother and sister-

in-law; by means of threats and intimidation the Shreveport Dades were forced to give the buyers $1,000 as a "Settlement Fee". They paid $2,000 down on a nice mobile home to live in, but the lawyer forced them (with threats that his brother would sue them) to cancel their purchase and move into the delapidated mobile home owned by the Cannatellas.

The lawyer coerced them into signing a blank "purchase agreement" for the mobile home which, when the blanks were filled in, turned out to be a 44-month lease at an exorbitant leasing rate. When the Shreveport Dades complained bitterly, the lawyer strung them along with lies and promises until he finally tricked them into signing a contract to buy the worthless mobile home for $36,954. This amount, together with the $3,462 in worthless debt the trustee scheduled them to pay to the Chapter 13 Office for "handling their

bankruptcy", caused the Shreveport Dades to owe $40,416 in worthless debts. Added to the $3,465 they owed in legitimate debts, they owed a total of $43,881 payable to the Chapter 13 Office and the Cannatellas.

When the Shreveport Dades became destitute in January, 1989, they asked their uncle, Cidney C. Dade, a resident of the State of Missouri for more than 40 years, to help them. He drove to Shreveport and agreed to help after listening to their saga and reading some of their documentation.

It was never a secret that "Uncle Cid" was ghost-writing the letters and documents signed by the Shreveport Dades that dismissed their lawyer, unsuccessfully pleaded with the trustee and judge for relief, unsuccessfully sought relief from the District Attorney for Caddo Parish, unsuccessfully sought relief from the U. S. Attorney

for the Western District of Louisiana, and unsuccessfully pleaded with the Cannatellas to mitigate the fraudulent mobile home contract. The Shreveport Dades finally rented a house and gave the Cannatellas a 30-day written notice that they intended to abandon the mobile home (in which they lived for almost nine months at a leasing and maintenance cost of more than $9,000) and sue.

The Shreveport Dades could not find a lawyer who could or would sue the Cannatellas for relief from the $36,954 of worthless debt. When the one-year Louisiana prescriptive period was about to expire, "Uncle Cid" ghost-wrote a complaint entitled: "Petition to Recover Damages Caused by Defendants in Their Efforts to Defraud Plaintiffs" which the Shreveport Dades filed on June 19, 1989 in the First Judicial District Court for Caddo Parish, Louisiana with the lawyer and his brother

and sister-in-law as defendants.

Judge Callaway lifted the bankruptcy stay of the Shreveport Dades so the lawyer and his brother and sister-in-law could sue them for libel, slander and defamation. The Cannatellas all convened against the Shreveport Dades and included as defendants Uncle Cid and a company he once owned in Missouri that did not exist after he retired.

The mobile home contract was annulled and the Shreveport Dades prevailed in getting a Caddo Parish judge to dismiss their lawsuit without prejudice for lack of legal representation. The reconventional demands filed by the lawyer and his brother and sister-in-law are still pending.

Ample evidence indicates that 1) the fraudulent Chapter 13 bankruptcy of the Shreveport Dades had no purpose except to steal their home and chattel for the lawyer's brother and sister-in-law, and 2)

the purpose of the fraudulent mobile home contract was to milk the Shreveport Dades financially until they became destitute at which time their ability to recover from the fraudulent bankruptcy would theoretically be destroyed.

(B) Basis for Federal Jurisdiction in the USDC for the Western District of La.

Allegation of jurisdiction in the USDC for the Western District of Louisiana was founded on: 1) diversity of citizenship and amount in controversy, and 2) the existence of a Federal question (judicial immunity) and amount in controversy. Appellants did not, however, specify jurisdiction in the original complaint because the Shreveport Dades had not, and have not, been discharged from jurisdiction of the U. S. Bankruptcy Court and Uniform Louisiana Local Rule 22.01 of the United States District Courts for the State of Louisiana. Under ULLR 22.01 for the Western District

of Louisiana, all cases or proceedings filed in the district court "arising in or related to a case under Title 11" are referred to a bankruptcy judge (Appendix Pg A-4).

The Shreveport Dades still seek an answer. They paid their debts in full in May, 1990. An ORDER by Judge Callaway dated July 5, 1990 and entered July 6, 1990 (Appendix Pg A-3), acknowledged their debts were paid, but no discharge has been issued pursuant to 11 USCA §1328.

A proper Allegation of Jurisdiction (Appendix Pg A-12) was made in plaintiffs/appellants' "Motion to Add Defendant and to Accept Jurisdiction of the Complaint in the U. S. District Court" that was filed in the USDC on May 17, 1991, but the case was dismissed on May 20, 1991.

(C) Amplification of Reasons for Allowing the Writ

The Shreveport Dades were threatened,

harassed, intimidated, vilified, stifled, stonewalled and lied to until they developed a deathly fear of being dragged through judicial proceedings, particularly those of the Chapter 13 Office and the U. S. Bankruptcy Court. Much of their fear arose from their misplaced trust in their dishonest lawyer who magnified his personal power and exploited their fear of the unknown.

Now that they understand the criminal conduct and judicial tyranny perpetrated on them by Judge Callaway, Trustee Davidson and the lawyer, most of their fear and the debilitating despair in which they lived for so long has given way to hate. The Dades intend to fight for their statutory and constitutional rights until their problems are redressed or until they are dead.

The Dades are neither agitators nor crusaders. They realize that publicly

airing their victimization could possibly have injurious consequences to the peace and security of many wage-earning home-owners in Shreveport and throughout the United States.

The Dades therefore respectfully pray that the Writ be allowed so a quiet, fair and equitable solution to their problems might be initiated or achieved through the U. S. Supreme Court before any further judgment is rendered in the Fifth Circuit Court of Appeals.

Respectfully Submitted,
JOINT PLAINTIFFS/APPELLANTS PRO SE:

James R Dade
James R. Dade

Montyne H. Dade
Montyne H. Dade

Cidney C. Dade
Cidney C. Dade

A P P E N D I X

1) ORDER by U. S. Circuit Judge:

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-4476

JAMES R. DADE, MONTYNE H. DADE, and CIDNEY C. DADE,

Plaintiffs-Appellants,

versus

JOSEPH A. CANNATELLA, JR., CHARLES EDWIN CANNATELLA, DARLENE LASUZZO CANNATELLA and PAUL H. DAVIDSON,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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O R D E R :

IT IS ORDERED that the motion of appellants to add a party-appellee and to correct the title of this action is DENIED. The order appealed from makes no reference to Judge Callaway.

Entered:
August 20, 1991

/s/ W. Eugene Davis
UNITED STATES CIRCUIT JUDGE

2) ORDER by U. S. District Judge:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

JAMES R. DADE, ET AL	NO. 91-0192
VERSUS	JUDGE TOM STAGG
JOSEPH A. CANNATELLA, JR., ET AL	MAGISTRATE JUDGE PAYNE

O R D E R

For the reasons stated in the Report & Recommendation previously filed herein, having thoroughly reviewed the record, and concurring with the Magistrate's findings under the applicable law:

IT IS ORDERED that defendant Davidson's Motion to Dismiss be GRANTED, and that this action be DISMISSED.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 20th day of May, 1991.

/s/ Tom Stagg

Judgment
Entered:
05/21/91

TOM STAGG,
UNITED STATES DISTRICT JUDGE

3) Order From Hearing on Trustees Motion to Dismiss:

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

IN RE: JAMES R. DADE
MONTYNE HILL DADE
(Debtors)

CASE NUMBER:
88BK-10495-S13

ORDER FROM HEARING ON
TRUSTEE'S MOTION TO DISMISS

On July 3, 1990, at 1:30 p.m. in Shreveport, Louisiana, a hearing was held on the Chapter 13 Standing Trustee's Motion to Dismiss the above captioned bankruptcy proceeding. The Motion to Dismiss was filed in response to an alleged default in payments under the confirmed Chapter 13 Plan.

At this hearing, the Trustee's Motion to Dismiss was withdrawn after the court determined that the debtors have in fact paid all creditors and have proven same to the satisfaction of the Court and to the Trustee. Therefore:

IT IS HEREBY ORDERED that the Standing Chapter 13 Trustee FILE a final accounting in the above captioned bankruptcy proceeding pursuant to Bankruptcy Rule 2015(a)(7) and, if applicable, request that a discharge be entered pursuant to 11 USC §1328 and the case be closed.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 5 day of July, 1990.

/s/ Stephen V. Callaway
STEPHEN V. CALLAWAY
CHIEF JUDGE,
U. S. BANKRUPTCY COURT

Entered:
July 6,
1990

4) Uniform Louisiana Local Rule No. 22.01:

22.01M & W Reference to Bankruptcy Judge

Under the authority of 28 USC 157 the District Court refers to the Bankruptcy Judges of this district all cases under Title 11 and all proceedings arising under Title 11 or arising in or related to a case under Title 11. (Ref Pg 14).

Federal Rule of Civil Procedure No. 19(a):

Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a

party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action. (Ref Pg 2)

Federal Rule of Civil Procedure No. 10 (a): CAPTION: NAMES OF PARTIES. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. (Ref Pg 2).

U. S. Supreme Court Rule No. 11: Certiorari to a United States Court of Appeals

Before Judgment.

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is given in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court. 28 U.S.C. §2101(e). (Ref Pg 3).

Amendment I, U. S. Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Ref Pg 3).

Amendment IV, U. S. Constitution: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and sei-

zures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Ref. Pg 3).

10) Amendment V, U. S. Constitution: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Ref Pg 3).

Amendment XIV, Section 1, U. S. Constitution: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Ref Pg 3).

Article III, Section 1, U. S. Constitution: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and

shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office. (Ref Pg 4).

Article III, Section 2, Subsection 1, U. S. Constitution: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens hereof, and foreign

States, Citizens or Subjects. (Ref Pg 4).

Article VI, Section 2, U. S. Constitution: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (Ref Pg 4).

Article VI, Section 3, U. S. Constitution: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public

Trust under the United States. (Ref Pg 4).

Allegation of Jurisdiction

(a) Jurisdiction founded on diversity of citizenship and amount in controversy.

Plaintiffs Pro Se James R. Dade and his wife, Montyne H. Dade, hereinafter referred to as the "Shreveport Dades", are domiciled in the State of Louisiana, and Plaintiff Pro Se Cidney C. Dade, hereinafter referred to as "Uncle Cid", has been domiciled in the State of Missouri for more than 40 years. It is believed that all defendants are Louisiana domiciliaries. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

(b) Jurisdiction founded on the existence of a Federal question and amount in controversy.

This claim arises under the Amendments to the Constitution of the United States as follows: The First Amendment, Fourth

Amendment, Fifth Amendment and Fourteenth Amendment, Section 1. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. (Ref Pgs i and 14).